



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Directorate C - Renewables, Research and Innovation, Energy Efficiency

**TENDER SPECIFICATIONS**

**ATTACHED TO THE INVITATION TO TENDER**

**ENER/C3/2014-542**

**Provision of**

**Guidance on compliance and reporting on the monitoring of  
the independent control systems**

## TABLE OF CONTENTS

1.	INFORMATION ON TENDERING .....	3
	1.1. Participation.....	3
	1.2. Contractual conditions.....	3
	1.3. Joint tenders.....	3
	1.4. Subcontracting.....	3
	1.5. Content of the tender .....	4
	1.6. Identification of the tenderer: legal capacity and status .....	4
2.	EVALUATION AND AWARD .....	5
	2.1. Evaluation steps.....	5
	2.2. Exclusion criteria.....	5
	2.3. Selection criteria.....	5
	2.1. Award criteria.....	7
	2.2. Technical offer.....	8
	2.3. Financial offer .....	8
	2.4. Estimate of the amount of work involved .....	9
3.	TECHNICAL SPECIFICATIONS.....	9
	<b>3.1. Introduction and objectives of the study .....</b>	<b>9</b>
	3.2. Description of services .....	10
	3.3. Reports and documents to produce – timetable to observe .....	12
	3.4. Report format and publication.....	13
	3.5. Duration of the tasks.....	14
	3.6. Organisation of Work .....	14
4.	ANNEXES .....	14

## 1. INFORMATION ON TENDERING

### 1.1. Participation

Participation in this tender procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the Multilateral Agreement on Government Procurement<sup>1</sup> concluded within the WTO applies, the participation to the call for tender is also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down.

### 1.2. Contractual conditions

The tenderer should bear in mind the provisions of the draft contract which specifies the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits.

### 1.3. Joint tenders

A joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

In case of joint tender, all economic operators in a joint tender assume joint and several liability towards the Contracting Authority for the performance of the contract as a whole.

These economic operators shall designate one of them to act as leader with full authority to bind the grouping or the consortium and each of its members. It shall be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration and for coordination. The composition and constitution of the grouping or consortium, and the allocation of the scope of tasks amongst the members, shall not be altered without the prior written consent of the Commission.

The tenderers should indicate in their offer whether the partnership takes the form of:

a) a new or existing legal entity which will sign the contract with the Commission in case of award

or

b) a group of partners not constituting a new legal entity, who via a power of attorney, signed by an authorised representative of each partner (except the lead partner), designate one of the partners as lead partner, and mandate him as lead contractor to sign the contract with the Commission in case of award.

### 1.4. Subcontracting

Subcontracting is permitted in the tender but the contractor will retain full liability towards the Contracting Authority for performance of the contract as a whole.

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<sup>1</sup> See [http://www.wto.org/english/tratop\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gp_gpa_e.htm)

Tenderers must give an indication of the part of the services and proportion of the contract that they intend to subcontract.

Tenderers are required to identify subcontractors whose share of the contract is above 20%.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the Contracting Authority.

### **1.5. Content of the tender**

The tenders must be presented as follows:

Part A: Identification of the tenderer (see section 1.6)

Part B: Evidence for exclusion criteria (see section 2.2)

Part C: Evidence for selection criteria (see section 2.3)

Part D: Technical offer (see section 2.5)

Part E: Financial offer (see section 2.6)

Part F: Power of attorney (for consortia only)

### **1.6. Identification of the tenderer: legal capacity and status**

- The tenderer's **identification form in Annex 1 shall be filled in and signed** by:
  - The tenderer (including any member of a consortium or grouping)
  - subcontractor(s) whose share of the work represent more than 20% of the contract
- In order to prove their legal capacity and their status, all tenderers (including any member of a consortium of grouping) must provide **a signed Legal Entity Form with its supporting evidence**. The form is available on:  
[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

**Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.**

- **If it has not been included with the Legal Entity Form, tenderers must provide the following information**
  - For legal persons, a legible copy of the notice of appointment of the **persons authorised to represent the tenderer** in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.

- For natural persons, where applicable, a proof of registration on a professional or trade register or any other official document showing the registration number.

- **The tenderer (only the leader in case of joint tender) must provide a Financial Identification Form and supporting documents. The form is available on: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm)**

## **2. EVALUATION AND AWARD**

### **2.1. Evaluation steps**

The evaluation is based on the information provided in the submitted tender. It takes place in three steps:

- (1) Verification of non-exclusion of tenderers on the basis of the exclusion criteria
- (2) Selection of tenderers on the basis of selection criteria
- (3) Evaluation of tenders on the basis of the award criteria (technical and financial evaluation)

Only tenders meeting the requirements of one step will pass on to the next step.

### **2.2. Exclusion criteria**

All tenderers shall provide a declaration on their honour (see Annex 2), duly signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in the Annex 2.

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 20%.

The successful tenderer shall provide the documents mentioned as supporting evidence in Annex 2 before signature of the contract and within a deadline given by the contracting authority. This requirement applies to all members of the consortium in case of joint tender. In case of doubt on this declaration on the honour, the contracting authority may also request the evidence for subcontractors whose intended share of the contract is above 20%.

### **2.3. Selection criteria**

Tenderers must prove their economic, financial, technical and professional capacity to carry out the work subject to this call for tender.

The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

#### *2.3.1. Economic and financial capacity criteria and evidence*

In order to prove their economic and financial capacity, the tenderer (in case of a joint tender the combined capacity of all tenderers and identified subcontractors) must comply with the following criteria:

- The tenderer (or, for a consortium, total turnover of its members) must have an average annual turnover of each of the last two financial years for which the accounts are closed of at least EUR 300,000.00

The following evidence should be provided:

- Copy of the profit & loss account for the last two years for which accounts have been closed,
- Failing that, appropriate statements from banks,

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his or her economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

### *2.3.2. Technical and professional capacity criteria and evidence*

#### **a. Criteria relating to tenderers**

Tenderers (in case of a joint tender the combined capacity of all tenderers and identified subcontractors) must comply with the following criteria:

- The tenderer must prove experience in the field of technical studies related to the energy performance of buildings with at least 5 projects completed in this field in the last three years with a minimum value for each project of EUR 50,000.00.
- The tenderer must prove experience in the field of studies on market surveillance with at least 5 projects completed in this field in the last three years with a minimum value for each project of EUR 50,000.00.
- The tenderer must prove experience and capacity to draft reports in English.
- The tenderer must prove experience of working in at least 20 European Union countries with at least 3 projects completed in the last three years, the combination of which must show the necessary coverage.
- The tenderer must prove experience in technical analyses and drafting reports and recommendations

#### **b. Criteria relating to the team delivering the service:**

The team delivering the service should include, as a minimum, the following profiles:

One Project Manager: with at least 10 years experience in project management, including overseeing project delivery, quality control of delivered service, client orientation and conflict resolution experience in project of a similar size (at least EUR 150,000.00) and coverage (geographical scope at least half of the one subject to this call for tender), with experience in managing a team of at least 15 people.

A team of at least 3 experts in energy performance of building: The team members shall have the relevant higher education degree (Master of Science in the field of building engineering physics or equivalent) and shall show at least 3 years' professional experience in the field of energy performance of buildings.

**c. Evidence:**

The following evidence should be provided to fulfil the above criteria:

- **List of relevant services** provided in the past three years, with sums, dates and recipients, public or private.
- **The educational and professional qualifications of the persons who will provide the service for this tender (CVs)** including the management staff. Each CV provided should indicate the intended function in the delivery of the service.

**2.1. Award criteria**

The tender will be awarded according to the best-value-for-money procedure. The quality of the tender will be evaluated based on the following criteria. The maximum total quality score is 100 points.

N°	Award Criteria	Weighting (pts.)
1	<p><b><u>Methodology of work</u></b>  <b>Fulfilment of the needs, the objective and the scope of the tender specifications.</b></p> <p>This criteria will assess the clarity, understanding, completeness and full coverage of the tasks described in the tender specifications, the quality and appropriateness of the proposed detailed approach for data collection for each EU Member State as well as the quality and appropriateness of the proposed approach for methodology and for validating, analysing and presenting information. On-site data collection should as much as possible be considered and will be considered of higher value for the scoring.</p>	60

**Call for tender ENER/C3/2014-542**

2	<p><b><u>Management</u></b></p> <p>This criterion will assess how the roles and responsibilities of the proposed team and of the economic operators (in case of joint tenders, including subcontractors if applicable) are distributed for each task. It also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the work. The tender should provide details on the allocation of time and resources and the rationale behind the choice of this allocation.</p>	<b>30</b>
3	<p><b><u>Quality control measures</u></b></p> <p>This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the objectivity of the technical assessment, the language quality check, and continuity of the service in case of absence of the member of the team. The quality system should be detailed in the tender and specific to the tasks at hand; a generic quality system will result in a lower score.</p>	<b>10</b>
<b>Total number of points</b>		<b>100</b>

Tenders must score at least 60% for each criterion and sub-criterion, and at least 70% in total. Tenders that do not reach the minimum quality thresholds will be rejected and will not be ranked.

After evaluation of the quality of the tender, the tenders are ranked using the formula below to determine the tender offering best value for money.

$$\text{Score for tender A} = \frac{\text{Price of lowest tender}}{\text{Price of tender A}} \times 0.3 + \frac{\text{Total quality score for award criteria for tender A}}{100} \times 0.7$$

**2.2. Technical offer**

The technical offer must cover all aspects and tasks required in the technical specification and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

**2.3. Financial offer**

The price for the tender must be quoted in euro. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to assume the risks or the benefits deriving from any variation.

Prices must be quoted free of all duties, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on



the privileges and immunities of the European Union. The amount of VAT may be shown separately.

The quoted price must be a **fixed amount** which includes all charges, including travel and subsistence, translations or any other costs deriving from the execution of the contract. Travel and subsistence expenses are not refundable separately.

#### **2.4. Estimate of the amount of work involved**

It is up to the tenderer to submit a financial proposal on the basis of his estimation of the number of man-days needed to perform the requested services. No maximum budget indication can be provided.

### **3. TECHNICAL SPECIFICATIONS**

#### **3.1. Introduction and objectives of the study**

##### *3.1.1. Introduction*

The recast of the Energy Performance of Buildings Directive<sup>2</sup> (EPBD-recast) puts the responsibility on MSs to ensure compliance with the obligations they set under the EPBD-recast for the:

- energy performance certification of buildings
- inspection of heating and air-conditioning systems
- energy performance requirements set for new buildings
- existing building that undergo a major renovation
- replaced or retrofitted building elements in existing buildings (both elements part of the envelope and technical building systems).

##### *3.1.2. Background*

During the process for adoption of the EPBD-recast it was highlighted that compliance was critical to really tap the savings potential in the building sector. As a result, one of the new features of the EPBD-recast is to require MSs to set up an independent control system for energy performance certificates and inspection of heating and air-conditioning systems.

The Concerted Action EPBD already worked on this topic in order to support a proper implementation at national level. A working group was organised to address this and its findings can be found in the 2012 Concerted Action report (<http://www.epbd-ca.org/Medias/Pdf/CA3-BOOK-2012-ebook-201310.pdf>).

In addition, some relevant projects were funded in the past by the European Union. In particular the ASIEPI project (01/10/2007 - 31/03/2010) analysed the compliance aspects in some participating countries and made suggestions for improvements (<http://www.asiepi.eu>).

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<sup>2</sup> Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, OJ L 153 of 18.6.2010, p.13. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:153:0013:0035:EN:PDF>

On-going activities on the matter recently started, e.g. the QualiCheck project: ([http://easme-projects.eu/iee/page/Page.jsp?op=project\\_detail&prid=2695](http://easme-projects.eu/iee/page/Page.jsp?op=project_detail&prid=2695))

QualiCheck will deliver in the next few years:

- An detailed analysis of about 100 buildings vis-à-vis their issued energy performance certificates to establish the actual level of quality on the ground,
- Recommendations on quality mechanisms to detect non-compliance as well as guidelines on fines or other mechanisms to increase quality,
- Recommendations on input data for energy performance certificates in order to improve their quality and make them easier to produce and more relevant to the actual buildings

By the end of 2015 should be available:

- Documented case studies,
- Draft summary results of the on-site analysis (to be published in early 2016),
- Draft summary recommendations for the input to energy performance certificates.

Nevertheless, the actual compliance rates are hardly known and after one year of application (EPBD-recast set the application deadline at national level on 9/01/2013 at the latest), it is time to closely look at the practical application on the ground and, if necessary, propose ways forward to improve compliance. In addition, it is important not only to look at compliance rate but also at related national/regional compliance checking practices, e.g. at what points in time compliance is checked (make reference for instance at the pre and after construction checks for new buildings, stage and practical process for checks on existing buildings, etc, and this in a differentiated manner for different EPBD provisions).

### *3.1.3. Purpose of the Service contract*

The purpose of the Service contract is to provide data on the level of compliance to the national measures taken by the Member States under the EPBD-recast and look at the influence of the national/regional practises on the observed level of compliance.

In addition, Article 18 of the EPBD-recast has laid down the obligations to ensure that independent control systems are established and set their main requirements. The Commission services recently requested Member States to report on the activity of their independent control systems. The Service Contract will aim at interpreting the collected data and suggest recommendation towards more effective independent control systems.

Finally, the Service contract will provide good estimates of the missed energy savings arising from a lack of compliance. These will be estimated with two references: first, based on the national energy performance requirements and second, based on the cost-optimal level of requirements, as calculated under Article 4 and 5 of the EPBD-recast. Beyond the requirements of the national/regional building code, compliance with these requirements is an importance aspect to make sure that the EU delivers on its 2020 objectives and specifically on the energy savings target.

## **3.2. Description of services**

The following section describes the requirements concerning the scope of this work.

Tenderers should clearly describe their overall approach to the work and the proposed services to meet this scope as part of the service contract.

*3.2.1. Task 1: Literature review and refinement of the data collection strategy*

The contractor will perform a detailed review of the existing literature and will summarise the available information that is relevant for the study. In particular, the contractor will examine the information available regarding Art.18 of the EPBD-recast.

Based on the methodology framework described in the offer, the Contractor shall detail the data collection strategy intended to collect the necessary data to establish the following compliance rates:

- Of the fulfilment of minimum energy performance requirements for new buildings with the minimum energy performance requirements set by MSs under Art.6 of the EPBD-recast,
- Of the fulfilment of minimum energy performance requirements for existing buildings that undergo a major renovation with the minimum energy performance requirements set by MSs under Art.7, 1<sup>st</sup> paragraph of the EPBD-recast,
- Of the fulfilment of minimum energy performance requirements for retrofitted/replaced building elements with the minimum energy performance requirements set by MSs under Art.7, 3<sup>rd</sup> paragraph and Art.8 of the EPBD-recast,
- With the obligation to have an energy performance certificates for buildings that are constructed, sold or rented out as laid down by Art.12(1)a of the EPBD-recast,
- With the obligation to have an energy performance certificates for buildings where a total floor area over 500m<sup>2</sup> that are occupied by a public authority and frequently visited by the public as laid down by Art.12(1)b of the EPBD-recast,
- With the obligation to hand over the energy performance certificate to buyers and new tenants under Art.12(2) of the EPBD-recast,
- With the obligation to advertise the energy performance certificates under Art.11(4) of the EPBD-recast,
- With the obligation to display energy performance certificates in public buildings arising from Art.13 of the EPBD-recast.

Different data collection strategies may be developed for the different compliance rate.

If needed, meetings with the team involved in the different on-going relevant projects (Cf. 3.1.2) can be organised.

These compliance rates shall be delivered with a confidence interval of  $\pm 10\%$  at a confidence level of 95% for the national values and  $\pm 5\%$  at a confidence level of 95% at EU level.

To that respect, the Contractor shall establish the different sample size to achieve the targeted confidence interval and confidence level. An estimate of the different population sizes corresponding to the targeted samples will be therefore necessary at this very preliminary stage (number of new buildings, number of major renovation, etc.).

The data collection strategy will include on the ground data collection (e.g. through mystery shopping, hiring people acting like a potential buyer or prospective tenant).

The Contractor shall also describe how the compliance check is organised in each MS and at what stage or stages the compliance check itself is being carried out.

*3.2.1. Task 2: Collect the data and preliminary interpretation*

Under Task 2, the contractor shall roll out the data collection strategy as established under Task 1 and shall provide the gross compliance rates.

Based on the literature review, the Contractor shall provide preliminary explanation about the influence of national practises in compliance checking on the compliance rates observed and in particular the divergence of compliance rates observed from a Member State to another.

The Contractor shall identify lacks of information to fully explain the data collected and shall build an action plan to fill these gaps during Task 3.

*3.2.2. Task 3: Interpretation of collected data and background information*

The Contractor shall collect the necessary information about the national legislative and non-legislative environment in order to:

- To completely interpret the compliance rates collected at national and European level,
- To identify existing practices in compliance checking,
- To identify and describe best practises and success factors to check compliance effectively and to achieve high compliance levels, and
- To suggest, based on best national compliance checking practises, potential actions to improve compliance in the future.

Finally the Contractor shall provide good estimates ( $\pm 5$  Mtoe) of the missed primary energy savings arising from low compliance. These will be estimated with two references: first, based on the national energy performance requirements and second, based on the cost-optimal level of requirements, as calculated under Article 4 and 5 of the EPBD-recast.

**3.3. Reports and documents to produce – timetable to observe**

Execution of the tasks begins on the date on which the Contract enters into force.

In principle, the deadlines set out below cannot be extended. The Contractor is deemed solely responsible for delays occasioned by subcontractors or other third parties (except for rare cases of force majeure). Adequate resources and appropriate organisation of the work including management of potential delays should be put in place in order to observe the timetable below.

*3.3.1. Meetings*

A **kick-off meeting** will take place in Brussels, at the latest **10 working days** following the signature of the contract, in order to settle all the details of the study, report, etc... to be undertaken.

A **final meeting** will take place in Brussels, at the latest 2 weeks after delivery of the draft final report in order to discuss the Commission's observations on the draft final

Draft the minutes of all meetings performed within this contract. Draft minutes shall be drafted by the Contractor and sent to the Commission at the latest 5 days after the meeting.

### 3.3.2. Reports

The contractor will submit the **inception report** at the latest **1 month** following the kick-off meeting including the data collection strategy (Cf. Task 1).

The contractor will submit the **first interim report** at the latest **6 months** following the kick-off meeting including the gross compliance rates at national and at EU level (Cf. Task 2).

The invoice for the interim payment shall be admissible if accompanied by the first interim report (six months after the date on which the contract enters into force). The payment will be made in accordance with Article 1.4.1 of the contract, given that the interim report has been approved by the Commission.

The contractor will submit a **draft final report and accompanying documents** to the Commission at the latest **8 months** after the signature of the contract.

The draft final report shall contain:

- A 15-20 pages presenting the methodology, providing the compliance results at EU level, interpreting these results and suggesting way forward to improve the compliance rates. This report shall include a 2-3 pages executive summary;
- National annexes to the report presenting the compliance results and describing explanation factors (legislative/non-legislative context) to the results observed at national level,

A **final meeting** will take place in Brussels, at the latest 2 weeks after delivery of the draft final report in order to discuss the Commission's observations on the document.

The contractor will update the draft final report taking into account the Commission's observations and submit the **final report and accompanying documents** at the latest **9 months** after the signature of the contract.

The final report shall also contain:

- A 10-15 slides presentation with detailed comments/notes, to further communicate this study and its results.

The Commission shall have 60 days from receipt to approve or reject the final report and to pay the balance. The Contractor shall have 20 days in which to submit additional information or a new final report.

### 3.4. Report format and publication

3 copies of the reports shall be supplied in paper form and one copy in electronic form in MS Office format (Word, Excel and PowerPoint).

The Commission may publish the results presented in the report. For this purpose, the tenderer must ensure that the report is not subject to any restrictions deriving from intellectual property rights of third parties. Should the Contractor intend to use data in the report, which cannot be published, this must be explicitly mentioned in the offer.

Reports and annexes have to be drafted in English in a properly literate manner and must be fully comprehensive in terms of grammatical structure (complete sentences, punctuation, explanation of abbreviations the first time they are used, etc.) using clear language.

### **3.5. Duration of the tasks**

The duration of the tasks shall not exceed **9 months**. This period is calculated in calendar days.

### **3.6. Organisation of Work**

#### **Place of performance**

The tasks will be performed on the Contractor's premises. However, meetings between the Contractor and the Commission may be held on Commission premises in Brussels.

#### **Availability of information**

As mentioned above, the Contractor will be responsible for the data collection, including on the ground data collection in all EU Member States.

#### **Language**

The Communication language between the Commission and the awarded Contractor shall be in English. The deliverables as such will have to be submitted in English.

## **4. ANNEXES**

1. Tenderer 's Identification Form
2. Declaration related to the exclusion criteria and absence of conflict of interest
3. Power of Attorney (mandate in case of joint tender)
4. Draft Contract

## ANNEX 1

### IDENTIFICATION OF THE TENDERER

(Each service provider , including any member of a consortium or grouping and subcontractor(s) whose share of the work is more than 20% of the contract must complete and sign this identification form)

### Call for tender ENER/C3/2014-542

<b>Identity</b>	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) <sup>3</sup>	
<b>Address</b>	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
<b>Contact Person</b>	
Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number:	

<sup>3</sup> For natural persons

**Call for tender ENER/C3/2014-542**

Fax number: E-mail address:	
<b>Legal Representatives</b>	
<b>Names and function of legal representatives</b> and of other representatives of the tenderer who are authorised to sign contracts with third parties	
<b>Declaration by an authorised representative of the organisation<sup>4</sup></b> I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

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<sup>4</sup> This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.



## ANNEX 2

### Declaration of honour on exclusion criteria and absence of conflict of interest

*(Complete or delete the parts in grey italics in parentheses)*  
[Choose options for parts in grey between square brackets]

The undersigned (*insert name of the signatory of this form*):

- in [his][her] own name (*for a natural person*)  
or
- representing the following legal person: (*only if the economic operator is a legal person*)

full official name:

official legal form:

full official address:

VAT registration number:

- declares that [the above-mentioned legal person][he][she] is not in one of the following situations:
  - a) is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
  - b) has been convicted of an offence concerning professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
  - c) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify including by decisions of the European Investment Bank and international organisations;
  - d) is not in compliance with all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be performed;
  - e) has been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such activity is detrimental to the Union's financial interests;
  - f) is a subject of an administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a procurement procedure or failing to supply this information, or having been declared to be in serious breach of its obligations under contracts covered by the Union's budget.
- (*Only for legal persons other than Member States and local authorities, otherwise delete*) declares that the natural persons with power of representation, decision-

making or control<sup>5</sup> over the above-mentioned legal entity are not in the situations referred to in b) and e) above;

- declares that [the above-mentioned legal person][he][she]:
- g) has no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinity, family, emotional life or any other shared interest;
  - h) will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
  - i) has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to award of the contract;
  - j) provided accurate, sincere and complete information to the contracting authority within the context of this procurement procedure ;
- acknowledges that [the above-mentioned legal person][he][she] may be subject to administrative and financial penalties<sup>6</sup> if any of the declarations or information provided prove to be false.

In case of award of contract, the following evidence shall be provided upon request and within the time limit set by the contracting authority:

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the tenderer is a legal person and the national legislation of the country in which the tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the contracting authority.

Full name

Date

Signature

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<sup>5</sup> This covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares.

<sup>6</sup> As provided for in Article 109 of the Financial Regulation (EU, Euratom) 966/2012 and Article 145 of the Rules of Application of the Financial Regulation

## ANNEX 3

### POWER OF ATTORNEY

#### mandating one of the partners in a joint tender as lead partner and lead contractor <sup>7</sup>

The undersigned:

– Signatory (Name, Function, Company, Registered address, VAT Number)

having the legal capacity required to act on behalf of his/her company,

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a tender as a partner in the group of partners constituted by Company 1, Company 2, Company N, and led by Company X, in accordance with the conditions specified in the tender specifications and the terms specified in the tender to which this power of attorney is attached.
- 2) If the European Commission awards the Contract to the group of partners constituted by Company 1, Company 2, Company N, and led by Company X on the basis of the joint tender to which this power of attorney is attached, all the partners shall be co-signatories of the Contract in accordance with the following conditions:
  - (a) All partners shall be jointly and severally liable towards the European Commission for the performance of the Contract.
  - (b) All partners shall comply with the terms and conditions of the Contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the Contract.
- 1) Payments by the European Commission related to the services and/or supplies subject to the Contract shall be made through the lead partner's bank account: [Provide details on bank, address, account number].
- 2) The partners grant to the lead partner all the necessary powers to act on their behalf in the submission of the tender and conclusion of the Contract, including:
  - (a) The lead partner shall submit the tender on behalf of the group of partners.
  - (b) The lead partner shall sign any contractual documents — including the Contract, and Amendments thereto — and issue any invoices related to the Services on behalf of the group of partners.
  - (c) The lead partner shall act as a single contact point with the European Commission in the delivery of the services and/or supplies subject to the Contract. It shall co-ordinate the delivery of the services and/or supplies by the group of partners to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present power of attorney shall be subject to the European Commission's express approval. This power of attorney shall expire when all the contractual obligations of the group of partners towards the European Commission for the delivery of the services and/or supplies subject to the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in ..... on [dd/mm/yyyy]

Place and date:

Name (in capital letters), function, company and signature:

<sup>7</sup> To be filled in and signed by each of the partners in a joint tender, except the lead partner;

ANNEX 4

**DRAFT CONTRACT**